



THE REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOR RELATIONS COURT KENYA AT NAIROBI

PETITION NO 51. OF 2015

IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLES 41, 230, 254 (G) 260

**IN THE MATTER OF CONTRAVENTION OF PUBLIC SERVICE COMMISSION ACT NO 13
OF 2012**

**IN THE MATTER OF THE CONTRAVENTION OF THE SALARIES REMUNERATION
COMMISSION ACT CAP 5F, NO. 17 OF 2012**

**IN THE MATTER OF THE CONTRAVENTION OF SECTION 54, 57 AND 60 OF THE LABOR
RELATIONS ACT AND THE CONSTITUTION**

**IN THE MATTER OF THE INTERVENTION BY THE 1ST RESPONDENT WITH THE
REGISTRATION OF THE APPLICANT/PETITIONERS CBAS & USURPATION OF THE
POWERS OF THE 4TH RESPONDENT**

BETWEEN

KENYA NATIONAL UNION OF NURSES PETITIONER

VERSUS

THE CHAIRPERSON, SALARIES & REMUNERATION COMMISSION ...1ST RESPONDENT

THE CABINET SECRETARY, MINISTRY OF HEALTH 2ND RESPONDENT

THE CHAIRMAN, COUNCIL OF GOVERNORS 3RD RESPONDENT

THE CHAIRPERSON, PUBLIC SERVICE COMMISSION 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

JUDGMENT OF THE COURT

1. What is before the court is a petition dated 15th of June 2015. The Petitioner sought orders:

- a. *Declaration that the function of job evaluation and setting salaries for public servants is a function of the Public Service Commission.*

- b. *Declaration that the SRC's function is to set and regularly review remuneration and benefits of state officers and advice the national and county governments thereafter.*
- c. *Declaration that the directive of the SRC and the Petitioner's CBAs before they were registered should be forwarded to SRC for further advice is illegal ab initio and the same is not provided by law.*
- d. *Declaration that the registration of the Petitioner's CBA should not be tied or linked with the continuous exercise of job evaluation.*
- e. *Declaration that all directives, circulars and letters directing the CBAs be forwarded to the 1st Respondent's office for further advice before registration are an illegality and the same are an interference with right of the Petitioner to collective bargaining.*
- f. *Any other orders that the Court deem fit.*
- g. *Costs by the Respondents.*

Fact of the Case:

2. On the 29th of April 2014, the 1st Respondent issued a letter addressed to the Principal Secretary, Ministry of Labour, Social Security and Services, which made it mandatory for Collective Bargaining agreements (CBA) related to public service employees, be submitted to her office for further advise before they are registered effectively halting registration of CBA's.
3. Further, through the Nation Newspapers Kenya dated 6th June 2015, the 1st Respondent made a pronouncement that she will conduct a job evaluation in which only junior public servants will benefit. This evaluation excluded senior public servants from salary increment and affected allowances of others contrary to the CBAs already agreed upon between the Petitioner and the employer.

Submissions:

4. The Petitioner avers that the 1st Respondent violated Article 41 (5) of the Constitution of Kenya by interfering with the Petitioner's right to engage in the exercise of collective bargaining.

The Article provides inter alia:-***"41 (5) every trade union, employers' organization and employer has the right to engage in collective bargaining"***.

5. The Petitioner further avers that the directive of the 1st Respondent that there shall be no salary increments until the exercise of job evaluation is completed contravenes the above Article of the Constitution as salary increment is a key component of collective bargaining. The evaluation of an already agreed upon CBA is a renegotiation of it in the absence of the Union.
6. The Petitioner further argues that the directive of the 1st Respondent that every CBA must be forwarded to her office for advice is not provided for in Law referring to Section 57 (1) and Section 60 (1) of the Labour Relations Act. Section 57 (1) stipulates that;

"An employer, group of employers or an employer's organization that has recognized a trade union in accordance with the provision of this part shall conclude a collective agreement with the recognized trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement."

Section 60 provides the steps to be followed when registering a CBA:

“60 (1) Every Collective agreement shall be submitted to the Industrial Court for Registration within 14 days of its conclusion...”

7. The Petitioner further avers that the job evaluation exercise will exclude the Senior Public Servants and is in contravention of Section 138 1 (a) and (c) of County Governments Act no 17 of 2012 which states as follows:

“Any public officer appointed by the Public Service Commission in exercise of its Constitutional Powers and functions before the coming to effect of this Act and is in service in a county on the date of the constitution of that county government, shall be deemed to be in service of the county government on secondment from national government with their terms of service as that date and:

- a. **The officers terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer’s disadvantage.**
 - b. **The officer’s terms and condition of service may be altered to officer’s advantage.**
8. The Petitioner avers that the 1st Respondent usurped the functions of the 4th Respondent who is the Public Service Commission as provided for under Article 230 4 (a) (b) and Article 234 (g) of the Constitution which provides as follows:

(4) The powers and functions of the Salaries and Remuneration Commission shall be to:-

- a. **Set and regularly review the remuneration and benefits of all state officers; and**
 - b. **Advise the national and county governments on the Remuneration of all other Public Officers.**
9. They state that the Constitution provides for the powers of the SRC enshrined in Section 11 of the Salaries and Remuneration Commission Act No. 10 of 2011 and provides that the Commission shall have powers to:
- a. **To inquire and advise on salaries and remuneration to be paid out of public funds and;**
 - b. **Keep under review matters relating to salaries and remuneration to be paid out of public funds.**

10. They further argue that the Petitioner is not a state organ and its members are not public servants within the meaning of Article 260 of the Constitution of Kenya, and subsequently their remuneration and benefits are not payable directly from the consolidated fund or directly from money provided by Parliament, hence its employees do not fall within the group of those whose salaries is to be set/ reviewed by the Commission.

11. The Petitioner rely in the case of **National Union of Water and Sewerage Employees vs. Mathira Water and Sanitation Company Ltd & 2 Others [2013] eKLR**, where the Court defined a public officer as one who executes government functions, not for profit or personal interest. They further rely on **Kenya Union of Domestic, Hotels, Education and Allied Workers (Kudhehia Workers) vs. Salaries and Remuneration Commission [2014] eKLR** where the Court held in paragraph 20 that the members of the Petitioner cannot be State Officers as per the definitions of the Constitution.

12. Therefore they argue that there is no basis upon which the 1st Respondent would direct that all signed CBAs should be forwarded to her office for advise, which action, to the Petitioner, amount to alteration and renegotiation of the terms of an already negotiated CBA in the absence of the Trade Union.

13. 1st Respondent did not file submissions but filed an undated Replying Affidavit sworn by Anne R. Gitau, filed on the 29th of June 2015 by Rosalie W. Wafula Advocate.
14. The 1st Respondent reiterated their constitutional mandate under Article 2, 230, and 249. They admit having received proposals from the Petitioner on their CBA where negotiations ensued as to the terms.
15. They gave advice as to how the CBA should be effected, which advice was not implemented. They further argue that there is an order by Hon Justice Byram Ongaya on 6th of June 2014, ordering the Respondent to negotiate and conclude a CBA with the Claimant by 1st September 2014 in accordance with the relevant provisions of the law. They further aver that the Applicants sought registration of the CBA which has not been possible because it was signed without following the Constitution advice of the 1st Respondent.
16. They submit that the job evaluation is not linked to the non-registration of the CBA. The job evaluation exercise will be conducted in conjunction with the 4th Respondent.
17. They argue that the Petition is an abuse of Court process and an attempt to register an illegal CBA and prevent the 1st Respondent from carrying out the job evaluation exercise. They appeal to the Court to deny the orders sought as they would not be in the public interest.
18. The 4th Respondent responded to the claim by a Replying Affidavit dated 7th July 2015 and filed on the 10th of July 2015, which they rely on.
19. The 4th Respondent avers that it was aware of the job evaluation exercise that was performed by the 1st Respondent and the 1st Respondent's was rightfully carrying out the job evaluation exercise in the discharging of its constitutional mandate of advising both the National and County Government on remunerations.
20. The 4th Respondent rely on Article 4, 230, 234 of the Constitution, as well as Section 54 and 57 of the Labour Relations Act which states that:

“Section 54(1) An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionsable employees.”

“Section 57 (1) An employer, group of employers or an employer's organization that has recognized a trade union in accordance with the provision of this part shall conclude a collective agreement with the recognized trade union setting out the terms and conditions of service for all unionsable employees covered by the recognition agreement”.

21. They further rely on Section 11 of the Salaries and Remuneration Commission Act No. 10 of 2011, which states in Section 11 the functions of SRC to include:
- a. ***Inquire and advise on the salaries and remuneration to be paid out of public funds;***
 - b. ***Keep under review all matters relating to the salaries and remuneration of public officers;***
 - c. ***Advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector;***
 - d. ***Conduct comparative survey on labor markets and trends in remuneration to determine the monetary worth of the job of public offices;***

- e. **Determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation.**
 - f. **Make recommendations on matters relating to the salary and remuneration of particular state or public officer;**
 - g. **Make recommendation on the review of pension payable to holder of public officers; and**
 - h. **Performance such other functions as may be provided for by the Constitution or any other written law.**
22. They aver that the SRC acts pursuant to Section 26 of the SRC Act and developed regulations, which have laid down the procedures and processes to be adopted *inter alia* when employers in the public service are carrying out the collective bargaining processes with unions representing the employees.
23. Rule 4 and 5 of SRC regulations mandate to undertake a review of salaries and remuneration of state and public officers every four years, which review will be determined by a study on labour market efficiency and dynamics, prevailing economic situations and comprehensive job evaluation; which information is then compiled into a report.
24. It is the Respondents' submissions that the actions of the SRC and other Respondent are Constitutional.
25. They aver that the Petitioner has not given any details of the alleged constitutional violations and as such, the Petition should be dismissed.
26. They submit that the Petition does not meet the constitutional threshold set out in the cases of **Anarita Karimi Njeru vs. Republic (1976 – 1980) KLR 1272 and Meme vs. Republic (2004) eKLR** where it was held that:
- “Where a person is seeking redress from the High Court on matter which involves reference to the Constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the provisions said to have been infringed and the manner in which they are alleged to have been infringed and that the Applicants instant application had not fully complied with basic test of Constitutional reference as it was founded on generalized complaints without any focus on fact, law, or Constitution. Hence it had nothing to do with the Constitutional Rights of the Appellant.”***
27. They also rely on **Ndyanabo vs. Attorney General (2001) 2 EA 485** where the Tanzanian Court of Appeal held that:
- “In interpreting the Constitution the Court would be guided by the general principles that:***
- i. ***The Constitution is a living instrument with a soul and consciousness of its own.***
 - ii. ***Fundamental rights provisions had to be interpreted in a broad and liberal manner.***
 - iii. ***There was a rebuttable presumption that legislation was constitutional.***
 - iv. ***The onus of rebutting the presumption rested on those who challenged the legislation's status save that.***
 - v. ***Where those who supported a restriction on a fundamental right relied on a claw back or***

exclusion clause the onus was on them to justify the restriction”.

28. The Respondent avers that the Petition has not met the threshold in the above case.

29. They also rely on the case of **Chemelil Sugar Company Ltd and 2 others vs. Kenya Union of Sugar Plantation and allied workers (2014) eKLR** where the Court was of the view that a CBA is a fundamental right recognized by both the ILO conventions and our Constitution. The state that the requirement for CBA to be submitted to SRC before registration is lawful.

30. They argue that the two Commissions have independent powers and functions and have to coordinate their activities for harmonious and smooth functioning of the public service. They conclude that they are interdependent none can be accused of usurping functions of the other.

31. The 3rd Respondent on the 23rd of July 2015 filed grounds of opposition listing 10 grounds which it believed the Petition is unsustainable as against the 3rd Respondent based on the following grounds;

- a. *That there is no remedy sought against the 3rd Respondent herein.*
- b. *The third Respondent is not an employer of the Petitioners.*
- c. *That none of the county governments represented by the 3rd Respondent has in force a CBA with the Petitioner.*
- d. *The county public service boards have their own legal capacities hence can be sued in their own name, the 3rd Respondent does not represent the County Public Service Boards in suits.*
- e. *That Article 230(4) (b) of the Constitution provides that one of the functions of the 1st Respondent is to advise the national and county government on the remuneration and benefits of all other public officers.*
- f. *That the heart of the Applicant CBA's is the salary increment of its members which falls within the jurisdiction of the 1st Respondent since the Applicant members are public officers employed by the national and county governments.*
- g. *The CBA between the Applicant and the Moi teaching and Referral Hospital is already a subject of another suit.*
- h. *This application and petition as filed is an abuse of Court process.*

32. They reiterate the roles of the SRC as enshrined in the Constitution, and the SRC Act No. 10 of 2011, and concur with the other Respondents that the SRC has the mandate of setting and regularly review the remuneration and benefits of all state officers and advising national and county government on the remuneration and benefits of all other public officers.

33. They aver that the members of the Petitioner are public officers and as such they are subject to the jurisdiction of the 1st Respondent. They are guided by the case of **Kenya Union of Domestic, Hotels, Education and Allied Workers (Kudhehia Workers) vs. SRC [2014] eKLR** which cited with approval the holding of Rika J in **National Union of Water and Sewerage Employees vs. Mathira Water and Sanitation Company supra**.

34. They argue that the 3rd Respondent is bound by the advice of the 1st Respondent. County Governments cannot act outside the directions of the 1st Respondent.

35.They further submit that Article 41(5) of the Constitution, Section 57 (1) and 60 (1) of the Labour Relations Act must be read alongside Article 230 of the Constitution, none of the provisions should be read in isolation. They rely on **Olum vs Attorney General of Uganda (2002) 2 EA 508.**

36.They conclude and state that the Petition lacks merit and it fails to appreciate the paradigm shift occasioned by the Constitution of Kenya in so far as the pay and emoluments of state and public officers is concerned.

37.Having considered the submissions of the parties, the issues for determination by this Court are as follows:

1. ***Whether the 1st Respondent herein has contravened the Constitution of Kenya 2010 and other statutes through her letter issued on 29th April 2014 with the attached circular dated 4th July 2012.***
2. ***Whether the decision by the 1st Respondent to conduct a job evaluation in which only junior civil servants will benefit is a usurpation of the function of the 4th Respondent herein and discrimination of the senior civil servants.***
3. ***Whether job evaluation should be linked to final completion of the Petitioners CBAs.***
4. ***Whether the 3rd Respondents herein, are properly enjoined in this case.***
5. ***What remedies if any can be granted in the circumstances.***

38.On the 1st issue, the 1st Respondent, SRC is established under Article 230 of the Constitution. Under Article 230(4) of the Constitution:

“The powers and functions of the Salaries & Remuneration Commission shall be:

- a. ***set and regularly review the remuneration and benefits of all State officers; and***
- b. ***advise the national and county governments on the remuneration and benefits of all other public officers.***

39. State Office on the other hand is defined under Article 260 of the Constitution as follows:

- a. ***President;***
- b. ***Deputy President;***
- c. ***Cabinet Secretary;***
- d. ***Member of Parliament;***
- e. ***Judges and Magistrates;***
- f. ***member of a commission to which Chapter Fifteen applies;***
- g. ***holder of an independent office to which Chapter Fifteen applies;***
- h. ***member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;***
- i. ***Attorney-General;***
- j. ***Director of Public Prosecutions;***
- k. ***Secretary to the Cabinet;***
- l. ***Principal Secretary;***
- m. ***Chief of the Kenya Defence Forces;***
- n. ***commander of a service of the Kenya Defence Forces;***
- o. ***Director-General of the National Intelligence Service;***
- p. ***Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or***

q. ***an office established and designated as a State office by national legislation;***

“State officer” means a person holding a State office;

40. It is therefore apparent that the SRC can set and regularly review salaries of the above state officers.

41. A public office on the other hand is defined under Article 260 as follows:

“Public office” means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament;

“Public officer” means:

- a. ***any State officer; or***
- b. ***any person, other than a State Officer, who holds a public office”.***

42. Vide its letter to Permanent Secretary, Ministry of Labour & Social Service dated 29.4.2014, the 1st Respondent advised as follows:

“The Commission however notes that some public sector employers have started submitting CBA’s directly to the Industrial Court for registration without seeking the advice of the Commission and analysis by your Ministry. Unless this practice stops, public sector employers will commit the Government to CBA’s that it cannot afford to implement, besides exacerbating distortions and disparities in the public sector wages-----“.

The purpose of this letter therefore, is to request you to ensure that all CBAs relating to public sector employers brought to your office for analysis have been advised on by the Commission. In addition, we request you to draw the attention of the Industrial Court to the emerging practice, where parties circumvent both the Commission and your Ministry in the registration of CBAs.

Yours-----“

43. The above letter is the one the Petitioners are offended with. I have already explained the duties and functions of the SRC as per the Constitution of Kenya. The duty is as provided under Article 230 of the Constitution and this duty is limited to seeking and regularly reviewing the remuneration and benefits of state officers.

44. In relation to the members of the Petitioners who are public officers, the only duty of the 1st Respondent is to advise the national and county governments on the remuneration and benefits of all other public officers. This is advice to the government at the two tier structure and not the Petitioners. To request the Petitioners to seek advice from them before negotiating a CBA will be a tall order and an unconstitutional requirement.

45. Article 41(5) of the Constitution is clear that:

“every trade union, employers’ organization and employer has the right to engage in collective bargaining”.

46. It is clear that this right is exercised between a union and an employer organization as provided for under Section 57(1) of the Labour Relations Act which states that:

“An employer, group of employers or an employers’ organisation that has recognised a trade union in accordance with the provisions of this Part shall conclude a collective

agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement”.

47. After the negotiations, the process that follows is set at Section 60 of the Labour Relations Act which states:

1. ***Every collective agreement shall be submitted to the Industrial Court for registration within fourteen days of its conclusion.***
2. ***The employer or employer’s organisation which is party to an agreement to be registered under this section shall submit the agreement to the Industrial Court for registration.***
3. ***If an employer or employers’ organisation fails to submit the collective agreement to the Industrial Court as specified in subsection (1), the trade union may submit it.***
4. ***The Industrial Court may request the parties to a collective agreement to supply further information or make oral or written representations to it for the purposes of this section.***
5. ***The Industrial Court may register an agreement:***
 - a. ***in the form it was submitted by the parties; or***
 - b. ***with any amendment or modification agreed to by the parties.***
6. ***The Industrial Court shall not register a collective agreement that:***
 - a. ***conflicts with this Act or any other law; or***
 - b. ***does not comply with any directives or guidelines concerning wages, salary levels and other conditions of employment issued by the Minister.***
7. ***The Industrial Court:***
 - a. ***may register a collective agreement within fourteen days of receiving it;***
 - b. ***may refuse to register a collective agreement unless all parties to the agreement have had an opportunity to make oral representations to the Industrial Court; and***
 - c. ***shall give reasons for refusing to register any collective agreement.***

48. It is not clear at what point the SRC would like to give advice to the government at the time of negotiating a CBA. By the time CBAs are submitted to the Ministry of Labour, they are already negotiated and they are only analyzed by the CPU to ensure compliance with the law and economic conditions.

49. My learned brother Hon. J. Rika addressed a similar concern in the **Union of Water & Sewage Employees vs Mathira Water & Sanitation Company Limited and others (2013) eKLR** and rendered:

“The Constitution recognizes that intrusion by the Commission into the entire area of public sector collective bargaining would have the effect of eroding the rights and freedoms given by Article 41. This is why the Commission comes in as an advisor under Article 230 (4) (b) rather than an active player determining how and when the collective bargaining would open or close”.

50. In the **Union of Domestic Hotels, Education and Allied workers (Kudhehia Workers) vs Salaries Remuneration Commission (2014) eKLR**, my learned brother Hon. Isaac J. Lenaola in a similar situation rendered himself thus:

“in that context, SRC’s role is limited to advising the national government (including parastatals and state corporations) on the remuneration and benefits of their officers hence the provisions in the Regulation 18 (2):

“that the management of a public service organization shall seek the advice of the SRC before any CBA negotiations are commenced conversely since trade unions have a direct connection with the SRC when the mandate of the later is critically looked at, there is no lawful basis why SRC should negotiate directly with trade union. It is not the place of SRC to negotiate with non-state and non-public service organs hence the provision of Regulation 18(1) above.

51.I do agree with the above expositions and do add that SRC should limit itself to its role as provided under Article 230 of the Constitution and therefore the letter dated 29.4.2014 expressly contravenes the Petitioner’s right to freely negotiate CBAs as envisaged under Article 41(5) of the Constitution and the Labour Relations Act and is therefore unstable. The SRC should devise a way in which it will advise the government as envisaged without getting into details of the negotiations which is to be freely exercised.

52.On the 2nd issue, the SRC also mentioned in their letter that they were going to undertake a job evaluation for junior officers to the exclusion of senior public servants. They also pronounced that some of the allowances of some senior public servants had been scrapped. The Petitioner has submitted that this contravenes Section 138 (1) (a) and (c) of the County Governments Act No. 17 of 2012 which states as follows:

“Any public officer appointed by the public service Commission in exercise of the Constitutional Powers and functions before the coming to effect of this Act and is in service in a County on the date of the Constitution of that County Government, shall be deemed to be in the service of the County Government on secondment for the national government with their term of service as that date and:-

- a. ***The officer terms of service including remuneration allowances and pension or other benefits shall not be altered to the officer disadvantage.***
- b. ***The officer terms and conditions of service may be altered to the officer’s advantage.***

53.It is therefore clear that the 1st Respondent’s pronouncement of taking away allowances of public servants contravenes the above law.

54.The Public Service Commission is established under Article 234 of the Constitution and has the follows functions:

1. ***The functions and powers of the Commission are as set out in this Article.***
2. ***The Commission shall:***
 - a. ***subject to this Constitution and legislation:***
 - i. ***establish and abolish offices in the public service; and***
 - ii. ***appoint persons to hold or act in those offices, and to confirm appointments;***
 - b. ***exercise disciplinary control over and remove persons holding or acting in those offices;***
 - c. ***promote the values and principles mentioned in Articles 10 and 232 throughout the public service;***
 - d. ***investigate, monitor and evaluate the organisation, administration and personnel practices of the public service;***

- e. *ensure that the public service is efficient and effective;*
- f. *develop human resources in the public service;*
- g. *review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service;*
- h. *evaluate and report to the President and Parliament on the extent to which the values and principles mentioned in Articles 10 and 232 are complied with in the public service;*
- i. *hear and determine appeals in respect of county governments' public service; and*
- j. *perform any other functions and exercise any other powers conferred by national legislation.*

3. *Clauses (1) and (2) shall not apply to any of the following offices in the public service:*

- a. *State offices;*
- b. *an office of high commissioner, ambassador or other diplomatic or consular representative of the Republic;*
- c. *an office or position subject to:*
 - i. *the Parliamentary Service Commission;*
 - ii. *the Judicial Service Commission;*
 - iii. *the Teachers Service Commission;*
 - iv. *the National Police Service Commission; or*

(b) an office in the service of a county government, except as contemplated in clause (2) (i).

4. *The Commission shall not appoint a person under clause (2) to hold or act in any office on the personal staff of the President or a retired President, except with the consent of the President or retired President.*

5. *The Commission may delegate, in writing, with or without conditions, any of its functions and powers under this Article to any one or more of its members, or to any officer, body or authority in the public service.*

55. The Petitioner argues that their roles are being usurped by the 1st Respondent. The 4th Respondent had argued that their role is complimentary with that of the 1st Respondent in ensuring smooth running of the public sector.

56. I have not seen any express provision in the Constitution which sets out the role of the PSC which the SRC seems to have usurped. The SRC is supposed to advise the government on public sector remuneration. It is therefore important as part of its duty to do the job evaluation which will be a tool to aid it in its work.

57. The contention that the SRC is usurping the PSCs' work is therefore not correct. However, the SRC's position that the CBA's must be linked to the job evaluation is still untenable in lieu of the reasons given above by this Court in deciding that Article 41 (5) of the Constitution must be respected. That too disposes of the 3rd issue above.

58. On the 4th issue is whether the 4th Respondents are properly enjoined in these proceedings. The

4th Respondent submitted that there are no prayers being sought against them. I have also not been able to discover which order the Petitioners seek from the Council of governors and therefore I find that they should not have been enjoined in this suit.

59. In the final analysis, I find that the Petitioners have established their case as against the other Respondents and I order as follows:

1. ***The 1st Respondent's circular/directions dated 29th April 2014 and the affidavit circular are unconstitutional in so far as they direct that CBAs should not be negotiated without their active involvement.***
2. ***The 1st Respondents role should be limited to achieving the Government in respect of CBA's involving the Petitioners and other public officers and not to certain negotiation and registration of CBA's already negotiated.***
3. ***The 1st Respondent should not tie conclusion of CBA's to job evaluation.***
4. ***1st Respondent will pay the Petitioners costs.***

Read in open Court this 18th day of February, 2016

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mr. Watsuma for AG. – Present and holding brief for Peter Wanyama for 3rd Respondent

Mr. Odhiambo holding brief Miss Ashubwe for Petitioner – Present